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Office of Proceedings

November 14, 2011

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Part of
Public Record

VIA HAND DELIVERY

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

RECEIVED
14
MANAGEMENT
CIB

Re: **STB Docket No. NOR** 42132 *Canexus Chemicals Canada, L.P. v. BNSF
Railway Company*

Dear Ms. Brown:

Enclosed for filing please find the original and ten (10) copies of the Public Version of the Complaint of Canexus Chemicals Canada, L.P. ("Canexus"). A check for \$350 is also attached to cover the filing fee required by 49 C.F.R. § 1002.2. An additional copy of the Complaint is included for date-stamping and return to the undersigned via messenger.

All material redacted from the Complaint is already known to defendant BNSF Railway Company ("BNSF"), the only other party in this case; consequently, BNSF is being served with the Confidential Version of the Complaint. Concurrently with this filing, defendant BNSF is also being served with the initial disclosures required by 49 C.F.R. 1111.1(b). Confidential material is contained in brackets [] in the Confidential Version, the original and ten (10) copies of which are being filed under seal with the Board today. An additional copy of the Confidential Version is also enclosed for date-stamping and return via our messenger.

Please feel free to contact me if you have any questions.

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TRANSPORTATION BOARD

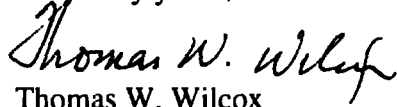
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**SURFACE
TRANSPORTATION BOARD**

Ms. Cynthia T. Brown
Office of Proceedings
Surface Transportation Board
November 14, 2011
Page 2

Very truly yours, \

A handwritten signature in black ink that reads "Thomas W. Wilcox". The signature is written in a cursive, flowing style.

Thomas W. Wilcox

Attorney for Canexus Chemicals Canada, L.P.

Enclosure

cc: Richard E. Weicher, Esq.
Jill K. Mulligan, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD

CANEXUS CHEMICALS CANADA, L.P.

Complainant,

v.

BNSF RAILWAY COMPANY

Defendant.

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MANAGEMENT

Docket No NOR 42132

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COMPLAINT

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SURFACE
TRANSPORTATION BOARD

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NOV 14 2011

SURFACE
TRANSPORTATION BOARD

Thomas W. Wilcox
Edward D. Greenberg
Svetlana Lyubchenko
GKG Law P.C.
1054 31st Street, Suite 200
Washington, DC 20004
Phone: 202.342.5248
Fax: 202.342.5222

Dated: November 14, 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

CANEXUS CHEMICALS CANADA, L.P.)	
)	
Complainant,)	
)	
v.)	Docket No NOR _____
)	
BNSF RAILWAY COMPANY)	
)	
Defendant.)	
)	

COMPLAINT

COMES NOW Complainant, Canexus Chemicals Canada, L.P. (“Canexus”), and files this Complaint with the Surface Transportation Board (“Board” or “STB”) against Defendant, BNSF Railway Company (“BNSF”), pursuant to 49 U.S.C. §§ 10704, 10707, and 11701, and 49 C.F.R. Part 1111 seeking a determination that the common carrier railroad rates BNSF has established for the transportation of chlorine from North Vancouver, British Columbia, Canada to Glendale, Arizona and to Albuquerque, New Mexico are unreasonably high. Canexus also requests that the Board award damages plus interest, to the extent that Canexus has paid common carrier rates in excess of the maximum reasonable rate for transportation to either destination since March 16, 2011. As explained in more detail below, Canexus states that the common carrier transportation rates challenged in this Complaint should be evaluated by the Board using the rate standards authorized by 49 U.S.C. § 10701(d)(3) and initially adopted by the Board in Ex Parte 646 (Sub-No. 1), *Simplified Standards for Rail Rate Cases* (served Sept. 5, 2007)

(“*Simplified Standards*”).¹ Canexus further requests that the Board evaluate the rates established to the issue movements under the Three-Benchmark approach described in *Simplified Standards*.

In support hereof, Canexus states as follows:

IDENTITY OF THE PARTIES

1. Canexus is a privately owned limited partnership with offices in North Vancouver, British Columbia, Canada. Canexus manufactures and markets chlor alkali products at its main production facility located in North Vancouver (“North Vancouver Facility”). The North Vancouver Facility produces for sale approximately 170,000 tons of chlorine per year, all of which must be transported to the customers of Canexus and Canexus U.S. - the latter which handles the sale and distribution of the chlorine in the United States - by railroad. The chlorine is transported in specialized rail tank cars supplied by Canexus. Canexus is the corporate entity with responsibility for arranging rail transportation on behalf of itself and Canexus U.S.

2. BNSF is a common carrier engaged in the common carriage of freight in interstate commerce under the jurisdiction of the Board. BNSF is subject to the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101 *et seq.*, and to the jurisdiction of this Board.

DESCRIPTION OF THE ISSUE MOVEMENT

3. The two movements that are the subject of this Complaint originate at the North Vancouver Facility and terminate at the rail facilities of Canexus’ customers located on BNSF in Glendale, Arizona and Albuquerque, New Mexico.

4. The North Vancouver Facility is physically connected to the Canadian National Railway (“CN”), which provides Canadian government regulated switching services between the North Vancouver Facility and an interchange point with BNSF at Brownsville Junction,

¹ *Aff’d, CSX Transp., Inc., et al. v. STB*, 568 F.3d 236 (D.C. Cir. 2009); *vacated in part*, 584 F.3d 1076 (D.C. Cir. 2009).

Vancouver. Based on information and belief, BNSF transports tank cars of Canexus' chlorine on its system southward through Washington, Oregon and California, thence southeast through Arizona and New Mexico to Glendale and Albuquerque, respectively. The switch charges at origin are 100% absorbed by BNSF, and therefore BNSF established origin to destination single line rates for services to each issue destination.

5. Thus far in 2011, Canexus has tendered [] to BNSF for transportation to Glendale, and [] for transportation to Albuquerque. Canexus projects that [] will be transported this year to Glendale and Albuquerque, respectively. During 2012, Canexus expects to again tender [] for transportation to each destination, respectively.

6. As required by 49 C.F.R. § 1111.1(a), Canexus provides the following details regarding the issue movements:

	Glendale	Albuquerque
Carrier identifier	BNSF Railway Company	BNSF Railway Company
Type of shipment	BNSF Single-line	BNSF Single-line
One-way distance	1,764 miles	2,169 miles
Type of car (URCS code)	Tank (URCS code 15)	Tank (URCS code 15)
Number of cars	One per shipment	One per shipment
Car ownership	Private	Private
Commodity type	Chlorine, STCC 2812815	Chlorine, STCC 2812815
Weight of the shipment (per car)	90 tons	90 tons
Type of movement	Single-car	Single-car

HISTORY OF THE CHALLENGED RATES

7. In the twelve months prior to March 16, 2011 chlorine shipments from North Vancouver to Glendale, Arizona and Albuquerque, New Mexico were transported by BNSF pursuant to common carrier tariff rates and service terms contained in BNSF Price Authority 90096, Implementing Agreement 1063.

8. Effective March 16, 2011, BNSF substantially increased its common carrier tariff rates for shipments of chlorine to Glendale, Albuquerque and other destinations in BNSF Price Authority 90096, Implementing Agreement 5000, Amendment 20, relevant portions of which are attached hereto as Exhibit A. The rate from North Vancouver to Glendale was established at \$14,485 per carload. The rate from North Vancouver to Albuquerque was established at \$17,614 per carload. BNSF further increased the amount paid for this transportation through the assessment of a monthly “fuel surcharge” as provided in BNSF Rules Book 6100-Series. Canexus began shipping under the rates, surcharge, and other common carrier terms and conditions on March 16, 2011.

9. The rates BNSF established for transportation from North Vancouver to Glendale and Albuquerque effective March 16, 2011 are significantly higher than the rates previously paid by Canexus for these destinations, and they are unreasonably high in violation of 49 U.S.C. §§10701 and 10704.

BNSF’S MARKET DOMINANCE OVER THE TRANSPORTATION COVERED BY THE CHALLENGED RATE

10. In accordance with 49 C.F.R. § 1111.1(a)(10), Canexus provides the following narrative describing the lack of feasible transportation alternatives:

11. There is no effective intramodal competition for the rail transportation of chlorine from the North Vancouver facility to Glendale or Albuquerque. 49 U.S.C. §10707. In the first

place, the Nation's Class I railroads have publicly stated to this Board and elsewhere that they no longer desire to transport chlorine and other toxic by inhalation ("TIH") chemicals, and they have taken numerous steps, including significantly increasing rail rates, imposing routing restrictions, and imposing onerous risk shifting conditions on transportation, with the goal of minimizing as much as possible the transportation of chlorine and other TIH commodities on their systems. These and other actions demonstrate that the railroads have ceased competing with each other to transport TIH commodities and to expand their respective share of the TIH commodity transportation market. In fact, the Board should establish a rebuttable presumption of market dominance for all chlorine movements. In any event, even if the STB was to conclude that despite all the evidence to the contrary, Class I railroads are competing for chlorine shipments and market share, there is no effective competition for Canexus' chlorine shipments. At origin, no other U.S. railroad has access to the North Vancouver Facility for this transportation either directly or through a switch arrangement with CN. At destination, both facilities are physically connected only to BNSF, and are therefore captive to BNSF. Accordingly, only BNSF can provide a single line haul all the way from origin to the customers' facilities in Glendale and Albuquerque, and other railroads pose no constraint on the rates BNSF may attempt to charge.

12. There is also no effective intermodal competition for the issue traffic. There is no dispute that intermodal competition with rail transportation from trucks does not exist for chlorine due to chlorine's status as a TIH chemical. This is particularly true for the issue movement, given its overall length.

13. There is no waterway that could be used for barge transportation between North Vancouver and the destination facilities in Glendale and Albuquerque. Similarly, there is no chlorine pipeline that could be used as a substitute for rail transportation.

14. Because there is no effective intramodal or intermodal competition for the issue traffic, BNSF has qualitative market dominance over the transportation of chlorine from the North Vancouver Facility, to the two destinations in this Complaint. 49 U.S.C. § 10707.

ESTIMATED URCS PHASE III VARIABLE COSTS

15. The common carrier transportation rates and “fuel surcharge” established by BNSF for transportation of chlorine from North Vancouver to Glendale and Albuquerque produce revenues substantially in excess of 180% of BNSF’s variable costs of providing the transportation. Therefore, BNSF has quantitative market dominance over this rail transportation, as described in 49 U.S.C. § 10707(d).

16. Pursuant to *Simplified Standards*, slip op. at 25, and using the URCS inputs listed above in paragraph 4, the following is Canexus’ preliminary estimate of the URCS Phase III variable costs and revenue-to-variable cost ratio for the movements from North Vancouver to Glendale and Albuquerque at 1Q11 levels:

	URCS phase III variable costs	Rate per car (including fuel surcharge)	R/VC ratio
Glendale	\$4,028	\$15,196	377%
Albuquerque	\$4,810	\$18,042	375%

17. Because BNSF possesses both qualitative and quantitative market dominance over the transportation of chlorine from North Vancouver to the issue destinations, the Board has

jurisdiction over the reasonableness of the common carrier rates, rules, and practices established by BNSF for this transportation. 49 U.S.C. § 10701(d)(1).

REQUESTED RELIEF

18. The common carrier railroad rates established by BNSF in Pricing Authority BNSF 90096, Implementing Agreement 5000, Amendment 20, for transportation of chlorine from North Vancouver to Glendale, Arizona and to Albuquerque, New Mexico, are unreasonable, unlawful, and exceed the maximum reasonable levels permitted by 49 U.S.C. §§ 10701, 10702, 10704, and/or 10707.

19. This Complaint encompasses any changes or successors to Pricing Authority BNSF 90096, Implementing Agreement 5000, Amendment 20 since its implementation on March 16, 2011, and all future iterations, issuances, or forms of common carrier tariffs, prices documents, rates, fuel surcharges, charges, rules, and service terms applicable to the transportation by BNSF of chlorine from North Vancouver to both destinations in this complaint.

20. Using the Three-Benchmark Methodology of the *Simplified Standards*, the Board should determine the extent to which the challenged rates exceed reasonable levels. 49 U.S.C. § 10704. The Board should also order that reparations be paid, plus interest, for any unlawful charges assessed by BNSF and paid by Canexus from and after March 16, 2011, when shipments under the new rates commenced. 49 U.S.C. § 11704.

21. The Board should also prescribe the maximum reasonable rates for this transportation applying the Three-Benchmark Methodology and the Board's rules governing rate prescription. In the alternative, the Board should issue an order prohibiting BNSF from increasing the rate for this transportation above the maximum reasonable level as calculated by the Board's procedures until the difference between the challenged rate and the maximum

reasonable rate exceeds \$1,136,855 (as of July 1, 2011), or until March 15, 2016, whichever comes first.

RELATED MATTERS

22. Canexus will participate in the Board's mandatory mediation process for rail rate disputes. *Simplified Standards*, slip op. at 23-24 and 103.

23. Canexus requests access to the Board's unmasked waybill sample as described in 49 C.F.R. § 1111.9(a)(2) and *Simplified Standards*, slip op. at 23.

24. Neither this proceeding nor the granting of the relief requested will constitute a major federal action significantly affecting the quality of the human environment or the conservation of energy resources.

25. In accordance with 49 C.F.R. §1111.1(b), Canexus is making mandatory disclosures to BNSF concurrently with the filing and service of this Complaint.

WHEREFORE, Complainant Canexus prays that Defendant BNSF be required to answer the charges herein; that this Complaint be assigned for hearing under 49 C.F.R. Part 1111; and that, after due hearing and investigation, this Board:

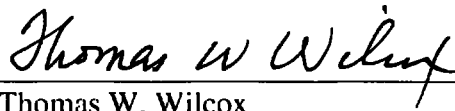
(1) after applying the Three-Benchmark Methodology of the *Simplified Standards*, find that the common carrier rates BNSF has established for the transportation by rail of chlorine from North Vancouver, British Columbia, Canada to Glendale, Arizona and Albuquerque, New Mexico are unreasonable in violation of 49 U.S.C. §§ 10701(d)(1) and 10702(1);

(2) award Canexus reparations, plus any applicable interest, as calculated based on the record in this proceeding, in accordance with 49 U.S.C. §11704 for the unlawful rates assessed by BNSF from and after March 16, 2011 to the effective date of a decision by the Board determining the reasonable rate levels;

(3) prescribe the reasonable rates applicable to BNSF's rail transportation of Canexus' chlorine from North Vancouver, British Columbia, Canada to Glendale, Arizona and Albuquerque, New Mexico; or, in the alternative, prohibit BNSF from increasing the rates for this transportation above the maximum reasonable level as calculated by the Board's procedures until the difference between the challenged rate and the maximum reasonable rate exceeds \$1,136,855 (as of July 1, 2011), or until March 15, 2016, whichever comes first; and

(4) Grant to Canexus such other and further relief as the Board may deem proper under the circumstances.

Respectfully submitted,



Thomas W. Wilcox
Edward D. Greenberg
Svetlana Lyubchenko
GKG Law P.C.
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Washington, DC 20004
Phone: 202.342.5248
Fax: 202.342.5222
Attorneys for Canexus Chemicals Canada, L.P.

Dated: November 14, 2011

EXHIBIT A

**BNSF RAILWAY COMPANY
CARLOAD**

**PRICE AUTHORITY: BNSF 90096
IMPLEMENTING AGREEMENT: 5000
CUSTOMER COPY**

**EFFECTIVE: MAR 16, 2011
EXPIRATION: DEC 31, 2011
AMENDMENT: 20**

RATE ITEM PRICE LIST

GENERAL RULES

-Freight charges must be prepaid, or freight charges must be collect.

-Price applies in United States funds.

-No mileage allowance will be paid. Customer warrants that its interest in the equipment used under rates in this price list is sufficient to permit it to waive full payment of mileage allowances, customer and railroad agree that railroad will not be liable for mileage allowances in excess of the above obligation. In the event that a party other than customer submits a claim to railroad for mileage allowance payments in excess of railroad's obligation under this price list, customer shall at railroad's option either (1) release, defend and indemnify railroad from said claim including attorney's fees and cost of litigation or (2) reimburse railroad for excess mileage allowances paid by railroad within (30) days of notice by railroad

-Origin and Destination groups used in this Price Authority are defined in BNSF Geography Group Book, BNSF-5. This Book is located on the BNSF website at bnsf.com.

-BILLING Each shipment made under this Price list shall be evidenced by a standard uniform straight bill of lading, order notify bill of lading (bill of lading) or shipping order. At the time shipment is tendered the original and all copies of the bill of lading or shipping order or other shipping orders shall contain reference to Price List BNSF 90096. PAYMENT PLAN Payment of all charges shall be made according to Surface Transportation Board or Canadian Credit Regulations and subsequent amendments. If payments are not made within the prescribed credit period, or if customer does not have credit with BNSF, payment may be required in advance of service. Rates and charges in this price list are payable to railroad in United States funds LOSS AND DAMAGE Standard common carrier liability pursuant to 49 U.S.C 11706 will apply on shipments made under this price list. Accordingly, railroad shall not be liable for any loss, damage or injury caused by an act of God, the public enemy, act of the customer, a public authority, or inherent vice or nature of the goods. Railroad shall not be liable for any loss, damage or injury due to improper loading. Pursuant to 49 U.S.C 11706, all claims against railroad must be brought within nine (9) months and all civil actions against railroad must be brought within two (2) years.

-EQUIPMENT HANDLING HAZARDOUS MATERIAL Equipment used under this price list shall be privately owned or leased cars as described in Tariff and ICC RER 6411-Series and tendered to railroad in accordance with all applicable hazardous material regulations of the United States Department of Transportation (DOT), as published in 49 CFR. This price list does not commit railroad to accept privately owned or leased equipment that does not have OT-5 approval from railroad. Customer shall indemnify and hold harmless railroad for loss, damage or injury due to any defects in privately owned or leased equipment, improper loading practices, or failure to properly close, secure and tender loaded or empty equipment, as prescribed by DOT regulations. Customer shall indemnify and hold harmless railroad for loss, damage or injury due to any defects in name, as provided in Column of Section 172.01 of United States Department of Transportation. Customer warrants that its interest in the commodity which are not described in the commodity's proper shipping name, as provided in Column of Section 172.01 of United States Department of Transportation. Customer and railroad agree that railroad will not be liable for mileage allowances. In the event that a party other than customer submits a claim to railroad waive full payment of mileage allowances. Customer shall, at railroad's option either (1) release, defend and indemnify railroad from said claim including attorney's fees and cost of litigation, or (2) reimburse railroad for excess mileage allowances paid by railroad within thirty (30) days of notice by railroad

-FORCE MAJEURE In the event any party cannot perform under this price list due to or as a result of the following causes: Acts of God, including, but not limited to flood, storm, earthquake, hurricane, tornado, or other severe weather or climatic conditions; acts of public enemy, war, blockade, insurrection, derailment, sabotage, fire, accident, wreck, washout or explosion, labor strike or interference, lockout or labor dispute, shortage of diesel fuel, embargo or AAR service order or governmental law, orders or regulation, or breakage of machinery; and/or any like causes beyond the reasonable control of customer or railroad, the parties' obligations under this tariff shall be suspended to the extent made necessary by the Force Majeure event at the affected origin(s) and/or destination(s) during any such disability period insofar as it applies to the affected location(s). Suspension shall not result in extension of the term of this price list. The party claiming the Force Majeure shall take all reasonable steps to remove the Force Majeure event, and shall promptly notify the other party(ies) within a period of five (5) days, excluding weekends and holidays when it learns of the existence of a Force Majeure condition and will similarly notify the other party(ies) within a period of five (5) days, excluding weekends and holidays, when the Force Majeure is terminated.

-GOVERNING PROVISIONS Except as otherwise provided for in this price list, shipments moving under this price list will be governed by the tariffs, exempt circulars, rate memorandums, rules and regulations which would apply if this price list were not in effect, except that origin and destination intermediate application rules will not apply if, for any reason, any rule, regulation, or provision of any tariff, exempt circular or rate memorandum referenced under this price list is canceled or becomes inapplicable, the last published provision that would have been applied will govern. In the event of conflict between the above referenced rules, regulations, etc. which are herein incorporated by general reference, and this price list, this price list shall govern. Railroad's obligation to provide service under this price list shall be no greater than it would be as a common carrier. Services or other matters not specifically addressed in this price list, including but not limited to, loss and limitations, shall continue to be governed by rules, regulations, tariffs, and statutory provisions, as amended from time to time, which would apply if it were not for this price list, and which are incorporated herein by reference. This price list shall not relieve railroad of its common carrier obligations as set forth in the uniform straight bill of lading terms and conditions. Said terms and conditions shall govern all shipments made hereunder and are incorporated herein by reference and made a part hereof as if fully herein set forth; provided, however, that in the event of any inconsistency between said terms and conditions and any other provisions of this price list, the provisions of this price list shall govern. Transit of any kind, inspection, or stopping-in-transit for completion of loading or partial unloading, does not apply. Diversion and reconsignment privileges do not apply in connection with shipments moving under the provisions of this tariff. Provisions of the applicable demurrage book will govern

**BNSF RAILWAY COMPANY
CARLOAD**

**PRICE AUTHORITY: BNSF 90096
IMPLEMENTING AGREEMENT: 5000
CUSTOMER COPY**

**EFFECTIVE: MAR 16, 2011
EXPIRATION: DEC 31, 2011
AMENDMENT: 20**

RATE ITEM PRICE LIST

—INDEMNIFICATION Upon delivery to and acceptance by customer of the commodity transported under this price list ("Commodity"), railroad and railroad's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents (collectively "Indemnitees") shall be relieved from any further obligation with regard to the disposition of the Commodity. Customer hereby agrees to release, defend, indemnify, and hold railroad harmless for, from and against any and all losses, damages (including special, incidental, and consequential damages), suits, liabilities, fines, penalties, costs, causes of action, demands, judgments and expenses (including without limitation, court costs, attorneys' fees, and costs of investigation, removal and remediation and government oversight costs) environmental or otherwise (collectively "Liabilities") of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) the disposition of the Commodity, or the work performed by customer or a licensed EPA cleanup-disposal operator designated by customer under this price list, including but not limited to, damages caused by sudden pollution. Customer shall, at the sole option of railroad, defend the Indemnitees at customer's sole expense in any claim involving the same.

The foregoing indemnification and hold harmless provision shall not apply to any Liabilities wholly caused by the sole negligence of any Indemnitee.

—Each railroad party to this price list represents and warrants that it is and will maintain the ability to be financially responsible for general liability (including contractual liability) insurance of not less than ten million dollars combined single incident limit for bodily injury and property damage. Customer agrees to keep in force general liability (including contractual liability) insurance of not less than ten million dollars combined single incident limit for bodily injury and property damage. Certification of insurance will be furnished by customer to railroad(s) party to this tariff.

—JOINT LIABILITY Each party shall indemnify ("Indemnifying Party") and hold harmless the other party for all judgments, awards, claims, demands, and expenses, including without limitation, attorneys' fees, environmental damage, hazardous materials damage, fines or penalties, for injury or death to all persons, including Railroad's and Customer's officers and employees, and for loss and damage to property belonging to any person whomsoever ("Loss or Damage"), arising during the transportation of the commodity under this tariff, but only to the extent the Indemnifying Party's negligence causes or contributes to any such Loss or Damage. In the event the proximate cause of such Loss or Damage cannot be determined, any liability for such Loss or Damage shall be shared equally between Railroad and Customer.

—LINE ABANDONMENT The terms of this price list in no way obligates the railroad to continue ownership, maintenance (including weight standards) or operations of any rail lines. Railroad will not be liable for any increased transportation costs or consequential damages that may result from such discontinuation. INSPECTION AND CLEANING OF EQUIPMENT If equipment owned or leased by railroad is used by customer or its designated agent to transport commodity named under this price list, customer shall assume and be responsible for cleaning and decontaminating the equipment to the satisfaction of railroad, before said equipment is returned to railroad. Customer shall assume and be responsible for visually inspecting and removing any residual waste from the equipment and insuring that sludge, or other residue contaminants resulting from the cleaning of the rail cars shall be properly disposed of in full accordance with applicable requirements of federal, state and local laws and regulations. If customer fails to decontaminate railroad furnished equipment used to transport commodity named under this price list to the reasonable satisfaction of railroad, railroad will have the right to have said equipment cleaned and all charges for cleaning will be billed directly to customer.

—LOADING AND UNLOADING: Customer shall have the sole responsibility, at its sole expense, for properly packaging, labeling, marking, blocking, bracing, placarding, loading and unloading the commodity into or out of equipment to be transported pursuant to this Agreement. Customer shall comply with the loading rules of the Association of American Railroads and applicable federal, state and local loading rules or other loading rules as modified to meet the needs of customer subject to approval or railroad's Risk Management Division as well as applicable federal, state and local requirements regarding the handling of the commodity. Customer shall further be responsible for insuring that the load limits of any equipment used for transporting the commodity under this price list are not exceeded. In the event it is discovered that equipment has been overloaded, railroad may set out such equipment at a location convenient to railroad and shall notify customer by telephone, confirmed in writing, of the location of the overloaded equipment. Railroad may then either (1) contact customer in which event customer shall have twenty-four (24) hours to remove excess weight; or (2) move the overloaded equipment to a location suitable for removal of the excess weight that meets with all federal, state and local requirements. In any event, customer shall be responsible for performing and bearing all costs for movement of the overloaded railcar and removal of excess weight. Railroad will move the affected equipment to destination in such manner and time as is practicable after railroad receives notice from customer that excess weight has been removed. Customer will be responsible to advise receiver when customer is not the receiver for inspecting all railroad equipment after unloading the commodity therefrom. Customer shall be responsible to advise receiver when customer is not the receiver for cleaning and decontaminating railroad equipment before its return to the railroad, as well as any adjacent or vicinity property at the origin loading location, destination unloading location and/or any location enroute where such waste has been loaded and/or unloaded in accordance with applicable requirements of federal, state and local laws and regulations including, without limitation, DOT regulations of 49 CFR 174.57. Customer or receiver shall have the right to arrange for such responsibilities to be carried out by third parties; PROVIDED, HOWEVER, that customer shall remain obligated to railroad under its promises in this price list in such cases. Notwithstanding, the provisions of the following INDEMNIFICATION paragraph, customer shall indemnify and hold harmless railroad or the actual owners of equipment used under this price list from and against any and all liability for loss damage (including but not limited to loss or damage to fees arising therefrom, or special and consequential damages) resulting from future use of equipment to the extent such loss, damage, personal, injury or death resulted from customer's failure or negligence in inspecting and/or decontaminating equipment prior to release to railroad.

—NOTICE Any notice given under this price list shall be effective when received. Notices, except as otherwise provided herein, shall be delivered to the party(ies) entitled to receive the same by personal delivery, by Registered or Certified Mail, Return Receipt Requested, or by an electronic means which can produce a written copy provided that acknowledgment of receipt of the electronic communication is obtained. Notices shall be addressed to the appropriate party(ies) as shown below. Any notices pertaining to a Force Majeure or to matters of an emergency or operating nature may be given by a reasonable means. Any notice given verbally shall be confirmed in writing by First Class Mail as soon as practicable, if requested by party(ies) receiving such notice. Name of Company

**BNSF RAILWAY COMPANY
CARLOAD**

**PRICE AUTHORITY: BNSF 90096
IMPLEMENTING AGREEMENT: 5000
CUSTOMER COPY**

**EFFECTIVE: MAR 16, 2011
EXPIRATION: DEC 31, 2011
AMENDMENT: 20**

RATE ITEM PRICE LIST

THE BURLINGTON NORTHERN AND SANTA RAILWAY COMPANY Attn Name & Title Attn Waste Marketing, Third Floor Address P.O. Box 961065 City, State and Zip Code Ft. Worth, TX 76161-0065

- Price is subject to a Fuel Surcharge. A Mileage Based Fuel Surcharge will be applied to the rates or charges in this price authority for the shipment, as provided for in Item 3376-Series, Section B (\$2.50 Strike Price), of BNSF Rules Book 6100-Series. This amount will be added to the freight bill.
- The Price document number, correct address and patron code must be shown on the bill of lading to insure accurate billing. Payments of freight charges on interline through rates within this price authority are as follows: Freight charges must be prepaid when BNSF is the originating carrier. Freight charges must be collect when BNSF is the terminating carrier.
- Rates in this price list take precedence in the following order. 1st - Point to Point, 2nd - Point to Group, Group to Point, and 3rd - Mileage Scale
- Transportation under this agreement is subject to BNSF Rules Book 6100-Series. A copy of this Rules Book may be obtained via the internet at www.BNSF.com. If Customer does not have access to the internet, Customer should contact Price Management at (817) 593-1134 and a copy of BNSF Rules Book 6100 will be mailed to Customer.
- Price is subject to UFC 6000.
- Rate Publication Insert: As a result of Transportation Security Administration (TSA) rail security regulations on Rail Security Sensitive Materials (RSSM), this price authority will not apply when shipments are routed via Interchange Junctions covered by Note 125 or to or from Stations covered by Note 126 of the Official Railroad Station List (OPSL 6000 series) RSSM are defined by the TSA in the Code of Federal Regulations at 49 C.F.R. 1580. RSSM are designated by the TSA and include TIH/PIH commodities and more than 5,000 lbs of either division 1.1, 1.2, or 1.3 Explosive materials or Class 7 radioactive materials. Customers interested in shipping RSSM via the Interchange Junctions and/or Stations covered by Notes 125 and 126 of the Official Railroad Station List (OPSL 6000 series) should contact their BNSF Marketing representative.
- Switching charges at Origin and Destination will be absorbed up to \$300.00. No more than \$300.00 per car will be absorbed. Any additional amount will be assessed
- For per car rates displayed in this Price Authority: For shipments moving on per car based rates in this Price Authority, BNSF will not be required to weigh shipments. Requests for weighing a car will be subject to the rules, regulations and charges found in BNSF Weighing Book BNSF-9300-Series. For weight based rates displayed in this Price Authority. For shipments moving on weight based rates in this Price Authority, shipper must have a Weight Agreement and will be responsible for supplying BNSF origin weights at the time of billing. If you are unsure if you have a Weight Agreement with BNSF, please contact auxpricing@bnsf.com. A weighing charge will apply whenever BNSF is requested to weigh a car. Except as otherwise provided herein, the rules, regulations and charges of BNSF Weighing Book, BNSF-9300 Series will apply, except item 500, paragraph C., 1, will not apply
- Prices in this Rate Item Price List do not alternate with other Rate Item Price Lists

COMMODITY DEFINITIONS

STCC	DESCRIPTION
	COMMODITY GROUP - BNSF 90096 COMM GRP (REN) (REN)
2812815	CHLORINE GAS, LIQUEFIED
2813914	METHYL BROMIDE
2813920	HYDROGEN BROMIDE, ANHYDROUS, LIQUEFIED
2813922	HYDROGEN CHLORIDE, ANHYDROUS, LIQUEFIED
2813932	CARBON MONOXIDE
2813946	HYDROGEN SULPHIDE
2813950	METHYL MERCAPTAN GAS
2813964	TRIFLUOROCHELORETHYLENE GAS (MONOCHLOROTRIFLUORO-ETHYLENE GAS)
2813975	NITRIC OXIDE
2815151	ISOCYANATE
2815207	N-BUTYL ISOCYANATE
2815210	CHLOROACETYL CHLORIDE

**BNSF RAILWAY COMPANY
CARLOAD**

**PRICE AUTHORITY: BNSF 90096
IMPLEMENTING AGREEMENT: 5000
CUSTOMER COPY**

**EFFECTIVE: MAR 16, 2011
EXPIRATION: DEC 31, 2011
AMENDMENT: 20**

RATE ITEM PRICE LIST

STCC	DESCRIPTION
2818008	BROMINE CHLORIDE
2818009	ALLYLAMINE
2818023	DIMETHYLHYDRAZINE
2818037	ETHYL CHLOROFORMATE
2818057	METHYL VINYL KETONE
2818063	METHYL ISOTHIOCYANATE
2818101	ACROLEIN (ACRALDEHYDE, ACRYLIC OR ALLYL ALDEHYDE, OR PROPENOL)
2818104	CHLOROACETONE (CHLORINATED ACETONE) (CHLORACETONE, MONOCHLOROACETONE OR 1CHLORO-2-PROPANONE)
2818123	CROTONALDEHYDE
2818131	DIMETHYLSULFATE
2818138	ETHYLENE CHLOROXYDRIN
2818168	BROMOACETONE
2818184	ETHYLENE DIBROMIDE (BROMOETHENE, BROMO- ETHYLENE, DIBROMOETHANE, ETHYLENE BROMIDE OR VINYL BROMIDE)
2818239	ETHYLENE OXIDE
2818288	METHYL ISOCYANATE
2818331	HEXACHLOROCYCLOPENTADIENE
2818410	ALLYL ALCOHOL (AA, PROPENYL OR 2-PROPEN- 1-OL) OR METHALLYL ALCOHOL NOT FIT FOR HUMAN CONSUMPTION
2818454	METHYL CHLOROFORMATE NOT FIT FOR HUMAN CONSUMPTION
2818820	CARBONYL CHLORIDE (PHOSGENE)
2818830	CHLOROPICRIN
2818890	GASES, COMPRESSED, NEC, POISON, COMPRESSED GASES, NEC, POISON, HAZARD CLASS 2.3 POISON GAS
2818915	ACETONE CYANOXYDRIN
2818920	PHENYL MERCAPTANS
2819216	NITRIC ACID, RED FUMING (IRFNA), IN BULK OR CONTAINERS
2819325	SULPHUR TRIOXIDE, STABILIZED
2819340	FUMING SULFURIC ACID 30% OR GREATER IN STRENGTH
2819415	PHOSPHORUS CHLORIDE OR TRICHLORIDE
2819416	PHOSPHORUS OXYCHLORIDE OR PHOSPHORYL CHLORIDE
2819422	CHLOROSULFONIC ACID
2819434	HYDROCYANIC ACID

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RATE ITEM PRICE LIST

STCC	DESCRIPTION
2819484	HYDROGEN FLUORIDE ANHYDROUS
2819535	NICKEL SALTS, NEC
2819919	BROMINE
2819961	SULFURYL CHLORIDE
2819962	SULPHUR CHLORIDE
2819971	TITANIUM TETRACHLORIDE
2819972	BORON TRIFLUORIDE
2819997	SULPHUR DIOXIDE (SULPHUROUS ACID ANHYDRIDE)
2879934	INSECTICIDES, AGRICULTURAL, NEC, LIQUID
2879936	INSECTICIDES, AGRICULTURAL, NEC, OTHER THAN LIQUID
2879951	INSECTICIDES, NITROTRI- CHLOROMETHANE (CHLORO- PICRIN, NITROCHLOROFORM OR TRICHLORONITROMETHANE INSECTICIDES), OR MIXTURES OF NITROTRI- CHLOROMET
2899799	CHEMICALS, NEC TOXIC INHALATION HAZARD
2912130	COAL GAS
4821019	WASTE ALLYL ALCOHOL
4821029	WASTE, TOXIC BY INHALATION LIQUID, FLAMMABLE, N.O.S.
4821722	WASTE HEXACHLOROCYCLO- PENTADIENE
4830030	WASTE SULFURIC ACID, FUMING

COLUMN HEADING DEFINITIONS

COLUMN LABEL	DESCRIPTION
COM	COMMODITY
WGT	WEIGHT CONDITION
EQP	EQUIPMENT
DTE	PRICE EFFECTIVE/EXPIRATION DATE
SHP	SHIPPING CONDITION

COLUMN NOTATIONS

NOTATION	DESCRIPTION
+	DESIGNATES SWITCHING LIMITS

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RATE ITEM PRICE LIST

NOTATION	DESCRIPTION
CU	PER CUBIC FOOT UNIT
GT	PER GROSS TON
LB	PER POUND
PA	PER CONTAINER
PC	PER CAR
PF	PER CUBIC FOOT
PH	PER HUNDRED POUNDS
PK	PER CORD
PM	PER MILE
PT	PER NET TON
PV	PER VEHICLE
PW	PERCENTAGE OF CHARGES
TN	PER TRAIN
TR	PER TRAILER

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RATE ITEM PRICE LIST

Matrix5

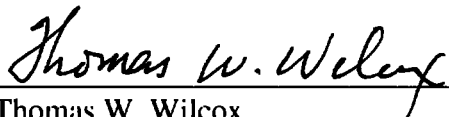
All prices in U.S. dollars

ORIGIN	DESTINATION	ROUTE	COM	WGT	EQ-TANK, PR,ZR-1	DTE	SHP
MINNEAPOLIS/ST PAUL, MN +	LEWISTON, ID +	BNSF DIRECT	C01		17171 PC	D01	S00 1
COUTTS, AB	HUDSON, CO +	BNSF DIRECT	C01		8004 PC	D01	S00 1
COUTTS, AB	BORGER, TX	BNSF DIRECT	C01		13520 PC	D01	S00 1
COUTTS, AB	NEWPORT, WA	BNSF DIRECT	C01		3840 PC	D01	S00 1
KIMBROUGH, AL	HAMILTON, MS	BNSF DIRECT	C01		2532 PC	D01	S00 1
NEW WESTMINSTER, BC +	PITTSBURG, CA +	BNSF DIRECT	C01		9954 PC	D01	S00 2
NEW WESTMINSTER, BC +	KALAMA, WA	BNSF DIRECT	C01		2512 PC	D01	S00 2
NORTH VANCOUVER, BC	GLENDALE, AZ	BNSF DIRECT	C01		14845 PC		S00 1
NORTH VANCOUVER, BC	PHOENIX, AZ +	BNSF DIRECT	C01		14845 PC		S00 1
NORTH VANCOUVER, BC	PITTSBURG, CA +	BNSF DIRECT	C01		9954 PC		S00 1
NORTH VANCOUVER, BC	WOODSBRO, CA	BNSF DIRECT	C01		9508 PC		S00 1
NORTH VANCOUVER, BC	HUDSON, CO +	BNSF DIRECT	C01		15439 PC		S00 1
NORTH VANCOUVER, BC	CAMANCHE, IA	BNSF DIRECT	C01		18340 PC		S00 1
NORTH VANCOUVER, BC	LEWISTON, ID +	BNSF DIRECT	C01		4480 PC		S00 1
NORTH VANCOUVER, BC	CHICAGO, IL +	BNSF DIRECT	C01		17135 PC		S00 1
NORTH VANCOUVER, BC	NORTHTOWN, MN	BNSF DIRECT	C01		15027 PC		S00 1
NORTH VANCOUVER, BC	ST LOUIS, MO +	BNSF DIRECT	C01		21168 PC		S00 1
NORTH VANCOUVER, BC	ALBUQUERQUE, NM +	BNSF DIRECT	C01		17614 PC		S00 1
NORTH VANCOUVER, BC	TULSA PORT AUTHORITY, OK	BNSF DIRECT	C01		19386 PC		S00 1
NORTH VANCOUVER, BC	ALBANY, OR +	BNSF DIRECT	C01		3590 PC		S00 1
NORTH VANCOUVER, BC	LAKE YARD, OR +	BNSF DIRECT	C01		2244 PC	D01	S00 1

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 2011, I served a copy of the foregoing Complaint by express overnight mail, upon the chief legal officer for Defendant at the following address:

Richard E. Weicher, Esquire
Jill K. Mulligan, Esquire
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76151
(817) 352-2353



Thomas W. Wilcox